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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. [redacted]18

STANDARD-VACUUM OIL COMPANY,
Petitioner,

against

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

STANDARD-VACUUM OIL COMPANY, *Petitioner,* *against* THE UNITED STATES OF AMERICA, *Respondent.*	No. 532

BRIEF FOR PETITIONER

Opinion of the Court Below

The opinion of the Court of Claims of the United States, filed on November 1, 1948 (R. 59-64), is reported at 80 F. Supp. 657 and 112 Ct. Cls. 137.

Jurisdiction to Review

Jurisdiction is conferred upon this Court by Title 28, United States Code, Section 1255(1). Certiorari was granted on March 28, 1949.

Question Presented

This case involves the question whether, under the circumstances here presented, the statute of limitations is a defense to certain claims for compensation for property taken by the United States military forces in the Philippine Islands after the outbreak of World War II. More specifically, the question presented is whether the statute of

limitations, in an action against the United States cognizable by the Court of Claims, was suspended for the period during which the claimant was deprived completely of access to information bearing upon the existence of its claim because of enemy occupation of the situs of the property and the internment of persons having knowledge of the facts bearing thereon.[1] It is petitioner's position that the Court of Claims of the United States erred in holding the statute of limitations to be a defense under such circumstances.

Statute Involved

The material portions of Section 156 of the Judicial Code, 36 Stat. 1139 (1911), 28 U. S. C. § 262 (1940), on the basis of which the Court of Claims dismissed parts of the Seventh and Fifteenth Claims stated in petitioner's second amended petition, are as follows:

> "Every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement thereof is filed in the court * * * within six years after the claim first accrues. The claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and per-

[1]The Government, in its brief in opposition to petitioner's application for certiorari, attempted to restate the question presented in terms of whether the statute of limitations was tolled because petitioner was unable to obtain "complete" information about the property taken. However, for a period of about four years, petitioner did not have any knowledge, complete or otherwise, of the fact that its property had been so taken. Indeed, the Government has not suggested, and it is not the fact, that petitioner had any such knowledge or information during that period.

sons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court * * * within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively."

Respondent's motion to dismiss was argued and submitted to the Court of Claims on June 1, 1948, at which time Section 156 of the Judicial Code stood as the limitation-of-action section applicable to the type of claim presented for consideration. While respondent's motion to dismiss remained pending and undecided before the Court of Claims, Section 156 of the Judicial Code was repealed by the Act of June 25, 1948 (62 Stat. 869), effective September 1, 1948, and a new statute, Title 28, United States Code, Section 2501, took its place.[2] Although the new statute does not appear to change Section 156 in any respect material here, it is believed that Section 156 is controlling, for the reason that Section 39 of the new act (62 Stat. 992) pro-

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[2]The provisions of Section 2501, in so far as applicable to such a claim as this, are as follows:

"§ 2501. *Time for filing suit*

"Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, or the claim is referred by the Senate or House of Representatives, or by the head of an executive department within six years after such claim first accrues.

* * * * * * *

"A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases."

Section 2501 is a consolidation of former 28 U. S. C. Sections 262, 250 (2) and 250(a).

vides that "Any rights or liabilities now existing under such [repealed] sections or parts thereof shall not be affected by this repeal."

Statement of the Case

Petitioner Standard-Vacuum Oil Company, a Delaware corporation, was, at the time of the Japanese invasion of the Philippine Islands in December, 1941, the owner of numerous oil installations located throughout the Philippine Islands. After the declaration of war by the United States upon the Japanese Empire on December 8, 1941, the United States Armed Forces of the Far East (USAFFE) requisitioned for military purposes certain of those installations owned by petitioner, including the petroleum stocks, supplies, buildings and equipment that made up the same. Among the installations so requisitioned were those located at San Fernando, La Union, Philippine Islands, and at La Paz, Iloilo City, Philippine Islands, to which specific reference is made in the Seventh and Fifteenth Claims stated in petitioner's second amended petition. A part of the petroleum stocks, supplies and equipment on hand at the requisitioned installations was used or removed by USAFFE, but as the Japanese forces advanced, USAFFE destroyed the remaining properties.

What occurred thereafter is now history. The USAFFE forces operating under General MacArthur were driven back and cornered in Bataan Peninsula and Corregidor, and by May of 1942, the Japanese were for all practical purposes in complete control of the Islands, with resistance being maintained only by guerrilla units. Beginning with the initial assault of the Japanese forces the Islands, and all civilian occupants thereof, were cut

off from the United States; and after Japanese occupation had become complete, all American citizens were either interned or placed in prison camps, and many of the Filipinos took refuge in the hills where they spent the duration in guerrilla activity.

In February of 1945, General MacArthur returned, and the Islands were thereafter liberated. Japan surrendered unconditionally in September of that year, but even at that time there were still pockets of Japanese resistance throughout the Islands. Then followed a period of many months of military occupation, with considerable civil turmoil being also present as a natural aftermath of the conflict.

Prior to the requisition and destruction of its San Fernando and La Paz installations by USAFFE personnel, petitioner had complete and accurate records of all that it owned and possessed at those locations. However, as an expectable concomitant of war, all local records and files, along with the various Army requisition documents and agreements between petitioner and USAFFE for the sale and delivery of certain petroleum supplies, equipment and property to USAFFE, were either destroyed, lost or taken by the invading forces, and for that reason it became impossible at that time for petitioner to ascertain either the existence of its claim against the United States respecting such properties or the extent thereof. Indeed, for several months prior to the outbreak of war, communications between petitioner's staff in the Philippines and its home office in New York were greatly curtailed, and thereafter even such limited communications were shut off.[3]

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[3]Any communication between petitioner and its representatives and employees in the Philippines after the outbreak of war not only was impossible as a practical matter but also was forbidden by law. Trading with the Enemy Act, Sections 2 and 3, 40 Stat.

Furthermore, the only persons, outside of the military, who would have known of the requisitioning by USAFFE of petitioner's various properties, and who would have been sufficiently informed as to the extent of such requisitioning in the absence of documentary material in respect thereof, were the American and Filipino employees of petitioner working at its San Fernando and La Paz installations. Those men, by virtue of their connection with the installations, would have been in a position to speak with reasonable accuracy in connection with the properties and stocks on hand when USAFFE took control of, and ultimately destroyed, the premises. And fortified with the information possessed by those men, petitioner could have presented its petition to the Court of Claims at an earlier date. Unfortunately, the American citizens employed by petitioner were either killed by the invading forces or placed in concentration camps for the period of the Japanese occupation of the Philippine Islands, facts which will, of course, be developed fully on the trial of this case, but facts which this Court may now notice judicially in light of the general knowledge surrounding Japanese methods of in-

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411 (1917), 50 U. S. C. App. §§ 2, 3 (1944); General Ruling No. 11 of the Secretary of the Treasury, 7 Fed. Reg. 2168, and Press Release No. 32, Press Service No. 30-79, both issued March 18, 1942. Under General Ruling No. 11 all trade or communication with enemy-occupied territory was forbidden unless licensed, and Press Release No. 32 provided:

> "Under today's regulations persons may not trade or communicate with an 'enemy national.' This means that they may not trade or communicate with (a) enemy territory; * * * 'Enemy territory' was defined as meaning the territory of Germany, Italy, and Japan, together with the territory under their occupation or control. The principal areas falling into this latter category were listed by name as a convenience to the public."

carcerating, or otherwise disposing of, civilians remaining in the Islands after the Japanese Invasion. Petitioner's Filipino employees were likewise unavailable as a source of information in respect of its claims against the United States for the reason that, because of the Japanese occupation, they were either under strict control of the Japanese authorities or else had withdrawn to the hills where they spent the duration in guerrilla activity. Nor could any information be obtained from the military personnel familiar with the facts surrounding the requisition by USAFFE of petitioner's San Fernando and La Paz installations since such men had been either killed or placed in prison camps.

Hostilities were terminated in 1945, but many months passed before the chaos and confusion of the war and its aftermath began to subside. When, during 1946, petitioner was permitted to send a skeleton staff to the Philippines, that staff faced the tremendous task not only of reconstructing its installations in order to supply petroleum products, in the first instance, to the American occupation forces and for essential civilian needs, but also of ascertaining all the facts bearing on the loss of petitioner's prewar properties. Little by little the facts were pieced together, but the process of investigation has continued even to the present date.

Petitioner recognized that in the normal course of events claims against the United States had to be prosecuted within the six-year period established under Section 156 of the Judicial Code. In an attempt to avoid any question as to the bar of this statute, petitioner filed its original petition with the Court of Claims on December 5, 1947, stating therein as completely as was then possible its over-all claim

against the United States for properties in the Philippine Islands requisitioned during the war. However, even that information as set forth in the petition was not satisfactory to respondent, for on December 26, 1947, it filed a motion for an order requiring petitioner to make its petition more definite and certain in numerous respects. During the time allowed petitioner within which to determine whether to make objection to respondent's motion, additional information in respect of other installations and supplies requisitioned by the United States was uncovered, and as a consequence a stipulation was filed whereby petitioner consented to the granting of respondent's motion and agreed to file an amended petition on or before March 22, 1948. On March 22, 1948, petitioner moved before the Court of Claims for leave to file its amended petition, and on March 24, 1948, that motion was granted and the amended petition filed (R. 59).

The amended petition changed petitioner's demand for compensation in respect of its San Fernando installation from one for a small quantity of gasoline of a value of $559.64 to one embracing all petroleum products, supplies, buildings and equipment at that location. The amended petition also added a new demand for compensation, based on the USAFFE requisition of petitioner's petroleum products, supplies, buildings and equipment located at La Paz. Respondent filed its motion to dismiss this amended petition both in respect of the additional compensation sought for USAFFE requisition at San Fernando and in respect of the demand for compensation based on the requisition of petroleum products at La Paz, the motion to dismiss being based upon the six-year limitation-of-action provisions of Section 156 of the Judicial Code. After petitioner had obtained

leave from the Court of Claims to file a second amended petition, for the sole purpose of correcting certain typographical errors appearing in its amended petition, respondent's motion to dismiss was allowed to stand against the second amended petition and, after argument thereon, was granted by a divided court.

Decision of the Court of Claims

In holding the statute of limitations to be a defense to petitioner's demand for compensation in respect of its San Fernando and La Paz installations, the Court of Claims decided that (R. 63):

> "In view of this language employed by Congress, and the circumstances of this case, * * * the running of the statute should [not] be tolled as to the claims of the plaintiff against which the motion to dismiss has been directed."

In reaching such conclusion, the majority recognized that, under the federal decisions, "the statute of limitations did not run while the creditor was incapable of suing, owing to the state of war" (R. 61), but "noted that in all the authorities reviewed [in the opinion], the courts in each instance were unavailable to the plaintiffs in question" (R. 62). And it added:

> "* * * in the case before us, the courts of the United States were open at all times to the plaintiff to present its claims against the Government. The plaintiff knew that its stores and supplies had either been requisitioned by the United States Government or destroyed in order to prevent their falling into the hands of the enemy many months ago."

The statement of the majority that the courts of the United States were at all times open to petitioner to present its claims is correct only in the sense that some representatives of petitioner were physically present in the United States after the fall of the Philippines, and if they had had knowledge of the existence of the claims here under consideration, suit could have been brought upon such claims. But without knowledge of the facts or means of ascertaining them, the courts of the United States were as effectively closed to petitioner as if all of its representatives had been interned by the Japanese.

The reference by the majority to petitioner's supposed knowledge of the facts "many months" prior to the decision on the motion to dismiss is not only based on facts outside the record before the court[4], but is wholly irrelevant. It has been held repeatedly that statutes of limitations cease to run during periods of disability arising out of war, and that claimants may not be deprived of the full period of time within which such statutes provide that they may sue: *Braun* v. *Sauerwein*, 10 Wall. 218, 222-23 (U. S. 1869); *Stewart* v. *Kahn*, 11 Wall. 493, 503 (U. S. 1870); *United States* v. *Wiley*, 11 Wall. 508, 513-14 (U. S. 1870); *Hanger* v. *Abbott*, 6 Wall. 532 (U. S. 1867). It is nowhere suggested, and it is clearly not the fact, that, with the period of hostilities deducted, your petitioner had a full period of six years within which to bring its suit.

Chief Judge Jones dissented from the opinion of the Court, and in an opinion rejecting the conclusion reached by the majority, he wrote as follows (R. 63-64):

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[4]Respondent's motion for judgment was made upon the face of the petition (R. 58).

"In the circumstances as disclosed by the pleadings and in the light of conditions that were known to prevail I would overrule the motion to dismiss.

* * * * * * * *

"Statutes of limitations are intended to bring disputes to an issue while information, records and living witnesses are available. But here the shoe is on the other foot. Every reason upon which statutes of limitations are based is on the other side and calls for a suspension of the statutes during a period when there was a blackout of information and facts. *Hanger* v. *Abbott*, 6 Wall. 532; *Braun* v. *Sauerwein*, 10 Wall. 218; *Osbourne* v. *United States*, 164 F. (2d) 767, 769."

We respectfully submit that this statement of the law is in harmony with sound principle and controlling authority, and that it is correct.

Argument

THE RUNNING OF THE STATUTE OF LIMITATIONS WAS SUSPENDED DURING THE PERIOD OF WAR AND ENEMY OCCUPATION.

A.

Principles of Constitutional and General Law under which Statutes of Limitations Developed and Were Held Constitutional Require that Claimants be Given a Reasonable Opportunity to Bring Suit.

Our argument under this point is derived, primarily, from two sources.

The first source relates directly to the intent of Congress in enacting this legislation. Following the mandate of the

Fifth Amendment, Congress has granted to your petitioner, and to other holders of claims similarly founded,[5] a remedy in the Court of Claims for the recovery of the value of their property requisitioned by the Government. We cannot assume that Congress, having thus recognized your petitioner's right and having granted a remedy thereon, has intended by this limitations legislation to take away that remedy before your petitioner, or other claimants similarly situated, could have resort to it.[6] Indeed, in view of the con-

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[5] *i.e.*, by former 28 U. S. C. § 250; present 28 U. S. C. § 1491.

[6] In this view we are strongly supported by statutes enacted during the two world wars and the periods of national emergency which preceded them, authorizing the requisition of property by the Government and its agencies, namely: 55 Stat. 742 (1941), 50 U. S. C. App. § 721 (1944), Requisition of Military Materials for the United States; 54 Stat. 1090 (1940), 50 U. S. C. App. §§ 711, 712 (1944), Requisition for the United States of Export Military Materials; 39 Stat. 1192 (1917), 50 U. S. C. § 82 (1940), Procurement of Ships and Materials during War, Commandeering Factories, etc.; 40 Stat. 241 (1917), 50 U. S. C. § 171 (1940), 40 Stat. 518 (1918), 50 U. S. C. § 171 (1940), 56 Stat. 177 (1942), 50 U. S. C. App. § 632 (1944), all dealing with the Acquisition of Real Property for War Purposes; 40 Stat. 888 (1918), 50 U. S. C. § 172 (1940), Acquisition of Property for Production of Lumber for War Purposes; 40 Stat. 182 (1917), Appropriations for Shipping and Shipbuilding Facilities; and 40 Stat. 438 (1918), Emergency Requisition Powers to the Emergency Fleet Corporation. All those statutes impose upon the Government a scheme and procedure following as closely as possible the scheme and procedure applying when private property is condemned by the Government in time of peace. Under all of them, except the statutes dealing with the acquisition for war purposes of real property and property for the production of lumber (which statutes provide for condemnation proceedings before the courts), the Government was required to determine the value of the property so taken and, if the owner was dissatisfied with such value, to pay a stated percent thereof, and such owner was then authorized to bring suit for the difference between the amount so received and the amount which he claimed to be the value of the property taken.

stitutional mandate against the taking of property without due process of law and fair compensation, it is questionable whether Congress could constitutionally enact legislation which would so operate. In any event this Court, in the absence of controlling statutory language, will not assume that it has intended to do so. As this Court said in *Sohn* v. *Waterson*, 17 Wall. 596, 599-600 (U. S. 1873):

> "* * * When a statute declares generally that no action, or no action of a certain class shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as to those arising in the future. But if an action accrued more than the limited time before the statute was passed a literal interpretation of the statute would have the effect of absolutely barring such action at once. It will be presumed that such was not the intent of the legislature. Such an intent would be unconstitutional. To avoid such a result, and to give the statute a construction that will enable it to stand,[7] courts have given it a prospective operation. * * *
>
> "* * * In those cases [*Ross* v. *Duval*, 13 Pet. 62, and *Lewis* v. *Lewis*, 7 How. 778] certain statutes of limitation—one in Virginia and the other in Illinois—had originally excepted from their operation non-residents of the State, but this exception had been

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Since the Congress thus imposed upon the Government the obligation to initiate action to compensate private owners for requisitioned property, it certainly did not intend that, in the absence of action by the Government, the owner's rights would be outlawed before he was aware of them.

[7] In *Webster* v. *Cooper*, 14 How. 488 (U. S. 1852), this Court held that a limitations statute of the State of Maine which, by applying to causes of action previously accrued, would have cut off the plaintiff's right to sue for the recovery of land before he became entitled to sue, was inoperative for constitutional reasons.

> afterwards repealed; and this Court held that the non-resident parties had the full statutory time to bring their actions after the repealing acts were passed, although such actions may have accrued at an earlier period. 'The question is,' says C. J. Taney (speaking in the latter of the cases just cited), 'from what time is this limitation to be calculated? Upon principle, it would seem to be clear, that it must commence when the cause of action is first subjected to the operation of the statute, unless the legislature has otherwise provided.' * * *"

And in *United States* v. *Greathouse,* 166 U. S. 601 (1897), this Court, in construing the limitation-of-action provisions of the Act of March 3, 1887 (the Tucker Act, 24 Stat. 505, c. 309), read into it the exception in favor of persons beyond the seas contained in the statute here under consideration, although the Tucker Act itself contained no such exception, saying (pp. 605-06):

> "* * * Although the Act of 1887 prescribes the limitation for suits 'under this [that] act', without making any exception in favor of persons under disability, it should be interpreted as if the proviso in section 1069 of the Revised Statutes were added to section 1 of that act. We could not hold otherwise without deciding, in effect, that the limitation of six years applied to claims accruing to married women and infants during their respective disabilities, as well as to the claims of idiots, lunatics and insane persons. We are unwilling to hold that Congress intended any such result. * * *"

The second source of our argument is historical, and relates to the principles under which statutes of limitation have developed and under which their constitutionality has

been sustained in the face of arguments that they unlawfully destroyed or abridged contract and property rights. Upon this subject Judge Cooley, in his treatise upon "Constitutional Limitations", in a chapter entitled: "Of the Protection to Property by 'the Law of the Land' ", has said (7th Ed., c. XI, pp. 522-23):

> "All limitation laws, however, must proceed on the theory that the party, by lapse of time and omissions on his part, has forfeited his right to assert his title in the law. * * *
>
> "All statutes of limitation, also, must proceed on the idea that the party has full opportunity afforded him to try his right in the courts. A statute could not bar the existing right of claimants without affording this opportunity: if it should attempt to do so, it would be not a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. * * *"

The views so expressed concerning the constitutionality of such legislation have special application when a citizen's constitutional right to compensation for property taken for a national purpose is sought to be defeated by the Government by a limitations statute, applicable only to itself, with the provisions of which he could not have complied. Certain it is that those views correctly represent the historical background and climate of opinion in which the law of limitations—particularly in its relation to such claims as these—developed into its present form. And it is likewise certain that the presumption as to statutory intent and the principles of statutory construction so stated are grounded in reason and fairness and are consonant with the principles now and always applied by this Court in the construc-

tion of Federal limitations statutes. Thus Judge Cooley's statement accurately represents the law of limitation of actions as applied in the Federal courts—a law which has not forgotten its historical sources, or the stages through which it developed. In the divisions of the argument which follow we shall note some of the more important situations in which the courts, and in particular this Court, have applied those principles.

B.

Federal Courts so Construe Federal Statutes of Limitations as to Afford Claimants a Reasonable Opportunity to Bring Suit.

In construing Federal limitations statutes, the Federal courts, and in particular this Court, have uniformly so construed their provisions as to allow to the aggrieved party a reasonable time within which to commence suit. Most frequently, this result has been accomplished by interpreting liberally the language of the statute respecting the time of the accruing of the right to relief by action. In general, they have held that such right to relief did not accrue until the plaintiff was actually placed in a position to bring suit.[8] That principle of construction was applied not only where the plaintiff had no remedy, because the courts were closed or for other like reasons, but also where he could not avail himself of such remedy because of the suppression of the

[8]Angell, Limitations of Actions, 6th Ed., c. VI, p. 37, states that: "The rule of the civil law is that *prescription* only begins to run from the time when the creditor has a full and perfect right to prosecute his demand. The same rule holds, of course, in respect to the legislative *acts of limitation* of Great Britain and of those of the United States." See also 3 Story, Eq. Jur. (14th Ed.) §1975.

acts or of his inability, for other reasons, to bring his ction.

Probably the foremost illustration of the rule in its atter (factual) aspect will be found in cases of fraud and raudulent concealment of facts. In *Holmberg* v. *Amrecht*, 327 U. S. 392 (1946), this Court stated the rule of tatutory construction applying in that situation as follows pp. 396-97):

> "Equity will not lend itself to such fraud and historically has relieved from it. It bars a defendant from setting up such a fraudulent defense, as it interposes against other forms of fraud. And so this Court long ago adopted as its own the old chancery rule that where a plaintiff has been injured by fraud and 'remains in ignorance of it without any default or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party.' *Bailey* v. *Glover*, 21 Wall. 342, 348; and see *Exploration Co.* v. *United States*, 247 U. S. 435; *Sherwood* v. *Sutton*, 5 Mason 143.
>
> "This equitable doctrine is read into every federal statute of limitation. If the Federal Farm Loan Act had an explicit statute of limitation for bringing suit under § 16, the time would not have begun to run until after petitioners had discovered, or had failed in reasonable diligence to discover, the alleged deception by Bache which is the basis of this suit. *Bailey* v. *Glover, supra; Exploration Co.* v. *United States, supra; United States* v. *Diamond Coal Co.*, 255 U. S. 323, 333. * * *"

It has been stated that the statute of limitations will ıot run against a claim unless, at the time of its accrual,

there existed a person by whom and against whom an action might be maintained thereon: *Richards* v. *Maryland Insurance Company,* 8 Cranch 84 (U. S. 1814); Angell, Limitations of Actions, 6th Ed., c. VII, pp. 49 *et seq.* And it has been held that the statute will not run against a claim while the right to sue thereon is suspended by law: *Montgomery* v. *Hernandez,* 12 Wheat. 129 (U. S. 1827); *Borer* v. *Chapman,* 119 U. S. 587, 601-02 (1887)[9]; 2 Wood, Limitations of Actions, 4th Ed., c. XXIII, pp. 1196 *et seq.* In *Richards* v. *Maryland Insurance Company* this Court thus stated the controlling principle (pp. 92-93):

> "* * * The cases which, though literally within the words of the statute, have been held to be without its spirit, are those only in which circumstances intervened, which rendered it impossible or inconsistent with known and established principles, that a cause of action could be revived by the renewal of the contract, or enforced by a suit at law within the time prescribed. The object of the law is, to secure the individual from the machinations of dishonesty, when attempted under the advantages attendant upon lapse of time, loss of papers, and death of witnesses. But when cases present themselves, in which no *laches* can be imputed to the plaintiffs, but great injustice would be done, by applying to such cases the effect of the statute, the conclusion of reason and of the law is, that such cases were not in the mind of the legislature, when enacting that law. Such are the cases of a want of parties, plaintiff or defendant, whereby a temporary suspension of legal remedy takes place."

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[9]Both were actions to recover money due under judgments from which appeals had been taken, the holdings being that the statute did not run while the appeals were pending.

So also, this Court has held that no statute of limitations will run against a Federally created right of action until the plaintiff is entitled to sue thereon. The rule is stated in decisions cited above (*Sohn* v. *Waterson; United States* v. *Greathouse*). It applies also to suits against stockholders of insolvent banks, upon their liability as such stockholders. No statute of limitations will run against such actions until the time fixed for payment of their assessed liability has expired. Thus in *Cope* v. *Anderson*, 331 U. S. 461 (1947), this Court said (p. 464):

> "But even though the period in which suit must be brought is governed by state limitations statutes, we have previously decided that the question of when the applicable state statute of limitations begins to run depends upon when, under federal law, the Comptroller of the Currency, or his authorized agent, is empowered by federal law to bring suit. And the Comptroller's agent, the Receiver here, could not bring these actions until the date for payment fixed by the Comptroller. * * *"

The situations described above are illustrative, not exclusive. *Cf. Webster* v. *Cooper*, 14 How. 488 (U. S. 1852); *Braun* v. *Sauerwein*, 10 Wall. 218 (U. S. 1869).

Following the same underlying principle, it has been declared repeatedly that the time within which a plaintiff may bring suit may not be so shortened by new limitations legislation as to deprive a plaintiff of a reasonable time within which to commence his action. Cooley, Constitutional Limitations, 7th Ed., c. XI, pp. 522-24; *In re Brown*[10], 135

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[10]This is one of a group of cases grouped under title: *McGahey* v. *Virginia*, 135 U. S. 662 (1889).

U. S. 701 (1889); *Terry* v. *Anderson,* 95 U. S. 628 (1877); *Koshkonong* v. *Burton,* 104 U. S. 668, 675 (1881).

It has been held, also, in various situations, that where a party has been deprived by facts beyond his control of his opportunity to appeal within the time limited by law, his time to do so will be extended. It was so held in a civil action, where war prevented the appeal. *The Protector,* 9 Wall. 687 (U. S. 1869). And it has been so held in criminal proceedings, where the prisoner was prevented from taking timely appeal because he was held in custody by the Federal authorities. *Wallace* v. *United States,* 174 F. (2d) 112 (C. C. A. 8th, 1949); *Oddo* v. *United States,* 171 F. (2d) 854 (C. C. A. 2d, 1949), *cert. den.,* 337 U. S. 943 (1949); *Remine* v. *United States,* 161 F. (2d) 1020 (C. C. A. 6th, 1947), *cert. den.,* 331 U. S. 862 (1947); see also *Boykin* v. *Huff,* 121 F. (2d) 865 (App. D. C., 1941). As stated by the court in *Wallace* v. *United States, supra* (174 F. (2d) at p. 114):

> "* * * But, in view of his [the prisoner-appellant's] incarceration and his conceded efforts to take an immediate appeal as soon as he knew of the entry of the order of dismissal, we think this Court properly may assume jurisdiction and consider this case upon the merits. * * *"

The decisions cited above are not based upon the peculiar provisions of the statutes before the courts. Nor are they isolated decisions unrelated to any underlying principle. On the contrary, they all rest upon the single underlying principle that a party aggrieved, upon whom a remedy is conferred by law, will not be deprived of that remedy by a limitations statute so operating as, under the circumstances

of the case, to deny him any real opportunity to exercise it. The decisions of this Court respecting the effect of war upon the running of statutes of limitations, which are cited in the division of the argument which follows, rest upon the same principle.

C.

Your Petitioner's Lack of Knowledge of the Existence of its Claims, Arising out of the Japanese War and Occupation of the Philippines, Prevented the Running of the Statute of Limitations Against the Claims.

The rule that a statute of limitations does not run against a creditor prevented from bringing suit by the existence of war is recognized by this Court and, we believe, by the courts of all the states. In many of the states the period of disability arising out of war is deducted by express statutory provision in computing the period within which suit may be brought. But the rule does not depend upon the existence of such express statutory exception. It exists and is applied although the statute is silent upon the point.[11] It was given an extended exposition by this

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[11]See authorities cited at pp. 22-27 of this brief and, in addition, *First Nat. Bank* v. *Anglo-Oesterreichische Bank*, 37 F. (2d) 564 (C. C. A. 3d, 1930); *Maryland Casualty Co.* v. *Vidigoj*, 270 S. W. 472 (Ky. 1925) (recognizing the general rule and pointing out that a specific statute to the same effect was controlling); *Wirtele* v. *Grand Lodge, A. O. U. W.*, 196 N. W. 510 (Neb. 1923) (as applied to a United States citizen resident in a belligerent nation during the first World War); *Farenholtz* v. *Meinshausen*, 168 N. Y. Supp. 869 (1st Dep't, 1918). See *Sands* v. *N. Y. L. Ins. Co.*, 50 N. Y. 626 (1872) (wherein the court by way of dictum stated that war extends the statute of limitations). *Cf.* Restatement, Property § 221(1)(d).

Court in the early case of *Braun* v. *Sauerwein,* 10 Wall. 218 (U. S. 1869), in which a Maryland statute of limitations was pleaded against a claim for money illegally exacted by the Collector of Internal Revenue, where the claimant was prevented from bringing immediate suit by the provisions of a Federal statute. Mr. Justice Strong, writing for a unanimous Court, discussed at length the judicial exception to the prescribed period of limitation where war prevented the bringing of suit, and concluded (p. 223):

> "It seems, therefore, to be established, that the running of a statute of limitations may be suspended by causes not mentioned in the statute itself. * * *"

And he said concerning the decisions holding the statute of limitations to have been suspended by reason of war (pp. 222-23):

> "* * * They all rest on the ground that the creditor has been disabled to sue, by a superior power, without any default of his own, and, therefore, that none of the reasons which induced the enactment of the statutes apply to his case; that unless the statutes cease to run during the continuance of the supervening disability, he is deprived of a portion of the time within which the law contemplated he might sue."

This Court and the lower Federal courts have held repeatedly that no statute of limitations will run against a claimant who is prevented by war from bringing suit within the period of statutory limitation. The rule was first applied to claims held by British subjects, which had accrued or existed during the War for Independence. *Hopkirk* v. *Bell,* 3 Cranch 454 (U. S. 1806). In that case

this Court read into a statute of limitations of Virginia an unexpressed exception, based upon the treaty of peace with Great Britain, suspending the running of the Virginia statute during the continuance of hostilities. The rule was applied in a long series of cases following the War between the States. *Hanger* v. *Abbott,* 6 Wall. 532 (U. S. 1867); *The Protector,* 9 Wall. 687 (U. S. 1869) (involving a time limitation [5 years] upon plaintiff's right to apply for review of a judgment by writ of error, etc.); *Levy* v. *Stewart,* 11 Wall. 244 (U. S. 1870); *Stewart* v. *Kahn,* 11 Wall. 493 (U. S. 1870); *United States* v. *Wiley,* 11 Wall. 508 (U. S. 1870); *Brown* v. *Hiatts,* 15 Wall. 177 (U. S. 1872); *Batesville Institute* v. *Kauffman,* 18 Wall. 151 (U. S. 1873) (holding that the lien of a judgment was not lost though not enforced within three years, as required by statute); *Adger* v. *Alston,* 15 Wall. 555 (U. S. 1872); *Semmes* v. *Hartford Insurance Company,* 13 Wall. 158 (U. S. 1871) (holding that a contract limitation of one year within which to bring suit was rendered inoperative by war); *Ross* v. *Jones,* 22 Wall. 576 (U. S. 1875); *Mayfield* v. *Richards,* 115 U. S. 137 (1885) (holding that a Federal statute tolling the statute of limitations during war applies to actions in state courts involving state limitations statutes). Recently the rule was applied to a disability arising out of the war with Japan. *Osbourne* v. *United States,* 164 F. (2d) 767 (C. C. A. 2d, 1947). There the libellant was prevented from bringing suit against the United States for a personal injury suffered prior to hostilities because of his internment by the Japanese during the period of the war with Japan.

As we have pointed out, the Court of Claims recognized that under the above decisions "the statute of limitations did not run while the creditor was incapable of suing, owing

to the state of war" (R. 61), but the majority—we submit erroneously—"noted that in all the authorities reviewed above, the courts in each instance were unavailable to the plaintiffs in question" (R. 62).

The Court of Claims was in error in its assumption that in all of this Court's decisions suspending the statute of limitations by reason of war the creditors were incapable of suing, or the courts were not available to them. In *United States* v. *Wiley, supra,* it was argued that because the United States was a creditor, suing its own citizen (though resident in a rebellious state), the courts were open to it, and the statute, therefore, continued to run. This Court rejected that argument,[12] saying (pp. 513-14):

> "* * * True, the *right* of a citizen to sue during the continuance of the war was suspended, while the *right* of the government remained unimpaired. But it is the loss of the ability to sue rather than the loss of the right that stops the running of the statute. The inability may arise from a suspension of right, or from the closing of the courts, but whatever the original cause, the proximate and operative reason is that the claimant is deprived of the power to institute his suit. Statutes of limitations are indeed statutes of repose. They are enacted upon the presumption that one having a well-founded claim will not delay enforcing it beyond a reasonable time, if he has the power to sue. Such reasonable time is therefore defined and allowed. But the basis of the presumption is gone whenever the ability to

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[12]Cf. *Adger* v. *Alston, supra; Batesville Institute* v. *Kauffman, supra; Ross* v. *Jones, supra,* each holding in respect of the War between the States that the statute of limitations was suspended in actions between citizens of the Confederate States, *i.e.*, between citizens of the same belligerent.

> resort to the courts has been taken away. In such a case the creditor has not the time within which to bring his suit that the statute contemplated he should have. * * *"

We respectfully submit that the creditor who has been deprived, by war, of knowledge of the existence of his claim, has thereby lost the ability to sue upon it within the meaning of this decision, and if the decision of the Court of Claims here under consideration be upheld, such a creditor is deprived of the reasonable time to sue which the legislature intended to grant him.

It is submitted that the majority of the Court of Claims has completely misunderstood the ground upon which this Court's decisions rest. Those decisions make no distinction between the various consequences of war, by reason of which suit is actually an impossibility, nor do any of them hold that if the war-originated disability is of one kind, or arises from one source, the statute is tolled, and if from another it is not. Specifically, the decisions of this Court are not open to the construction placed upon them by the court below—*i.e.*, that the statute is not tolled by lack of knowledge, as a consequence of war and enemy occupation, of the existence of a claim. Quite to the contrary, this Court's leading decisions have repeatedly emphasized the illegality and impossibility of obtaining information concerning the claim from the hostile territory as one of the dominant factors compelling the decision; as, see *Levy* v. *Stewart, supra,* at pp. 253-54; *Stewart* v. *Kahn, supra,* at p. 505; *Hanger* v. *Abbott, supra,* at p. 535. Obtaining such information was equally unlawful and impossible in this case.[13]

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[13]See footnote, pp. 5-6, *supra.*

This Court's decisions, and the general law respecting the suspension of statutes of limitations by reason of war, we submit, rest simply upon the fact that, actually, the existence of war prevented the bringing of actions within the time limited by the statutes. They involve, not technical considerations, nor metaphysical distinctions between lack of knowledge and lack of power,[14] but rules of substantial justice. They relate to the basic principles of the law of limitations which are stated earlier in the argument. In every one of this Court's principal decisions it has referred to the existence of a reasonable time within which to sue, to laches,[15] to the presumptions ordinarily arising from the lapse of time without suit, and to the fact that those factors which ordinarily justify the enactment and application of statutes of limitations are not present when failure to bring suit is the result of war. *Hauger* v. *Abbott*, *supra*, at p. 538; *United States* v. *Wiley*, *supra*, at pp. 513-14; *Levy* v. *Stewart*, *supra*, at pp. 253-55. In all of them the decision rests upon those factors. They are the same factors which produced this Court's decisions suspending the running of the statute in actions grounded upon fraud where the plaintiffs were without knowledge of the facts: *Holmberg* v. *Ambrecht*, *supra*; and in actions temporarily stayed by statute: *Braun* v. *Sauerwein*, *supra*; or by the pendency of judicial proceedings: *Montgomery* v. *Hernandez*; *Borer* v. *Chapman*, both *supra*. Basically, they are the same factors

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[14] In point of fact, this Court's decisions do not recognize any such distinction. "Concealment of fraud prevents a party from knowing that he has been injured and has a cause of action. He *cannot* take any steps to obtain redress." *Amy* v. *Watertown* (*No. 2*), 130 U. S. 320, 325 (1889). (Italics supplied.)

[15] Justifiable lack of knowledge of the facts is the element most commonly present and emphasized in decisions involving laches and the presumptions arising from lapse of time.

which have caused this Court to declare unconstitutional statutes of limitations failing to provide a reasonable time within which to sue: *In re Brown, supra;* and to construe all statutes limiting time for suit in such a manner as to provide a reasonable time within which the claimant may enforce his claim: *Sohn* v. *Waterson, supra.* They are fully applicable to the case at bar. In ignoring them, we respectfully submit that the Court of Claims committed error.

Few cases have reached the courts—state or Federal—in which a plea of the statute of limitations finds so little support in the principles underlying such statutes, or in sound judicial construction, or in disclosed Congressional policy, or in basic fairness. The Government, having taken your petitioner's property without a hearing or any semblance of due process, now seeks to defeat its Constitutional right to compensation by the mere lapse of time. There is not any probability, and there has not been any contention, that the Government's position has worsened, either by loss of evidence or otherwise, by reason of such lapse. It is clear that the intervention of war constituted an insurmountable obstacle to the obtaining of knowledge by your petitioner concerning the requisitioning of its property, and no fact appears to support a different conclusion. It is clear also that, by reason of such lack of knowledge and the interposition of the statute, your petitioner has been deprived of any opportunity to present its case—thus losing through facts beyond its control its Constitutional right, not only to fair compensation, but also to due process and the protection of the law of the land in connection with the taking of its property by the Government.

Conclusion

It is respectfully submitted that the judgment of the Court of Claims of the United States dismissing as being barred by the statute of limitations parts of the Seventh and Fifteenth Claims stated in petitioner's second amended petition is wrong and should be reversed.

Respectfully submitted,

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